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Supreme Court of the United States

October Term, 1948

No. 674

WATERMAN STEAMSHIP CORPORATION,

*Petitioner,*

*against*

JAMES DEAN, GEORGE CICIO,

ALFRED J. WAYNE *et al*

PETITION FOR WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT OF THE PETITION.

*Respectfully Submitted,*

*Counsel for Petitioner*

ARTHUR F. GILMAN,

*Of Counsel*

New York, N. Y., March 22, 1948.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

1. The petitioner, Waterman Steamship Corporation, prays that a *writ of certiorari* issue to review the judgment of the United States Court of Appeals for the Fourth Circuit (R. 104) entered December 27, 1948 affirming a final decree of the District Court of the United States for the District of Maryland (R. 2-4) in a cause in admiralty, in salvage, decreeing an award of \$45,100 to the respondents, James Dean *et al.*, part of the complement of the Steamship *Furnifold M. Simmons* which freed the petitioner's Steamship *Fairisle* from a strand on the east coast of India on September 5, 1946.

Lower Court opinion (R. 106-103) reported, 171 Fed. (2d) 408; District Court opinion (R. 4-19), 76 Fed. Supp. 27.

## JURISDICTION

2. The judgment below was entered December 27, 1948. The jurisdiction of the court is provided by 28 U. S. C. 1254(1).

## SUBJECT MATTER

### EXTENT OF THE REVIEW SOUGHT

3. Review of the judgment below is sought only insofar as it sanctions the district court's increase of a salvage award expressly on matter which was not in the record or otherwise before the court and which should not be considered, according to long established principles of this court. The review requested raises only a question of law. No question of fact is involved.

### THE NATURE OF THE QUESTION

4. The district court, in fixing the award, said:

"We are influenced to a considerable extent by the present depreciated value of the dollar, and by the fact that in considering and applying, as precedent, the early decisions it would be appropriate, if given precisely the same circumstances today as are disclosed in those cases, to make a considerable increase in the awards there made" (R. 12).

The Court of Appeals observed that the amount of the award by the district court was increased for the above reasons (R. 100); overruled the petitioner's assignment of error directed to that action of the district court and ruled that the question was settled in *The Kia Ora*, 252 Fed. 507, where the same court, in fixing an award, had "stressed the

rise of the general price level as one of its reasons for increasing the award of the district court" (R. 103).

The well-defined elements to be taken into account in fixing a salvage award, as established in *The Blackwall*, 77 U. S. 1, have long been applied by the admiralty courts. The lower court has specifically innovated the doctrine that in determining a salvage award it is proper to increase the award because of depreciation of the United States dollar.

Such depreciation of the dollar is an incompetent factor and its consideration violates the fixed principles controlling the determination of a salvage award even if depreciation of the dollar were in evidence in the cause.

#### QUESTION PRESENTED

5. Should the share of the value of the salvaged property which would otherwise be awarded to the salvors be increased by reason of a depreciation of the United States dollar particularly when any such depreciation is presumably reflected in the inflated value of the property salvaged?

#### REASONS FOR GRANTING THE PETITION

6. The Court of Appeals for the Fourth Circuit has approved, and declared as settled, a doctrine of salvage services which violates fundamental and established principles of the law of salvage in admiralty and which is of such importance to owners and underwriters of vessels and cargo in all water-borne transportation that it should be reviewed and corrected by this court in the exercise of this court's power of supervision.

7. A writ of *certiorari* should be granted, to the end that the cause be reviewed by this Court and remanded to the

lower court, if this Court see fit, with directions to remit it to the district judge for recomputation of the salvage award uninfluenced by his conception of the depreciated value of the dollar at the time of judgment.

Respectfully submitted,

ROBERT S. ERSKINE,  
Counsel for Petitioner.

EUGENE F. GILLIGAN,  
Of Counsel.

New York, N. Y., March 25, 1949.

## BRIEF IN SUPPORT OF THE PETITION

## ARGUMENT

The main ingredients for determining a salvage award were defined by this Court in *The Blackwall*, 77 U. S. 1, as follows:

(1) The labor expended by the salvors in rendering the salvage service. (2) The promptitude, skill, and energy displayed in rendering the service and saving the property. (3) The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed. (4) The risk incurred by the salvors in securing the property from the impending peril. (5) The value of the property saved. (6) The degree of danger from which the property was rescued." P. 14.

These well-defined elements have long been used as guides by the courts (R. 101). *The Niels Nielsen*, 277 Fed. 164 (2 C. A.); *The Flottbek*, 118 Fed. 954 (9 C. A.); *The Livietta*, 242 Fed. 195 (5 C. A.).

A suit for salvage has been held by this Court not to arise out of tort; that it may be founded on contract, but does not necessarily depend upon contract, express or implied. *United States v. Cornell Steamboat Company*, 202 U. S. 184, 190. The pronouncement of this court in *The Blackwall*, 77 U. S. 1, is also long established, and followed, that

"Compensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of a *quantum meruit*, or as a remuneration PRO OPERE ET LABORE, but as a reward given for perilous services, voluntarily rendered, and as an inducement to seamen and others to embark in such undertakings to save life and property." P. 14.

The value of the salvaged vessel or property and the salvaging vessels are important evidentiary elements to which an award necessarily has direct relation, for a salvage award is, in a sense, the award of a share in the thing salvaged. This court, in *Oelwerke Teutonia v. Erlanger & Galinger*, 248 U. S. 521, in dealing with a salvor's claim that their expenses were not given sufficient consideration, said:

" \* \* \* But, as was pointed out by the court below, the cost was their affair. There was no contract and no request. They went into a speculation and their only claim is *a lien upon goods that they have rescued for a share in the saving that they have made for the owners.* \* \* \*." P. 524. (Italics ours.)

The principle is the same where, as here, the salvors acted with the approval and consent of the vessel salvaged. The proved dollar values of the salvaged and salvaging vessels (R. 7), and the other recognized ingredients which are considered in determining an award, are all-sufficient. A due share of the dollar value of the property salvaged is given.

Depreciation in the value of the United States dollar reflects a shrinkage of buying power which, in turn, reflects *inflated* values of property. Therefore, if upon analysis of elements of salvage laid down in *The Blackwall* case an award in earlier years would have been "x" of the value of the salvaged property, The same award would be proper in any similar case, despite any depreciation of the dollar because that depreciation would be off-set by the greater number of dollars realized from the inflated value of the salvaged property.

What the lower court and the district court did herein (R. 12, 100, 103) was to give to the salvors a reflection of

the depreciated value of the dollar twice. That works injustice to the petitioner here, the owner of the salvaged vessel; in another case where dollar value is considered appreciated, application of the lower court's erroneous theory would then work injustice to the salvors.

There can be no question that the salvage award is to be measured as of the time of the completion of the services. *The Neshaminy*, 228 Fed. 285, 289 (3 C. A.); *The Magnolia*, 253 Fed. 400 (Cal. N. D.); *The Lowther Castle*, 195 Fed. 604, D. C., N. J.; *The John I. Brady*, 109 Fed. 912, E. D. Pa.; *Canadian Government Merchant Marine, Limited, v. U. S.*, 7 Fed. (2d) 69 (2 C. A.). The latter case is especially significant.

The court had under consideration in that case the assessment of a salvage award for the beaching and flooding of a burning steamer. The salvaged vessel's sound value prior to the fire was great but ship values dropped very sharply after the salvage event and before judgment. The court, in assessing the award, concerned itself only with the salvaged value of the vessel at the time of the salvage and stated that it wholly disregarded the sharp drop in ship values subsequent to the salvage event. (P. 70).

Its unsoundness is apparent in considering its application in other similar situations. For example, if the owner of cargo negligently damaged in sea carriage which entitles him to a recovery of the difference between the sound market value of the goods at destination and their value in damaged condition there, he would be entitled under the lower court's theory to collect in judgment an amount more than his proved damage, if at the time of judgment the court considered that "dollar" value was then depreciated.



## CONCLUSION.

It is submitted that the error of law of the lower court is one of substance. If not corrected, it will seriously affect the right of owners and underwriters of vessels and cargo as well as the right of salvors in one of the most important phases of the water-borne commerce of the world. For the foregoing reasons and the considerations stated in the petition herein, we submit that this Court should exercise its supervisory power and grant the petition submitted herewith.

Respectfully submitted,

ROBERT S. ERSKINE,  
Counsel for Petitioner.

EUGENE F. GILLIGAN,  
Of Counsel.

New York, N. Y., March 25, 1949.